Supreme Court, U. S.
FILED
FEB 16 1978
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

No. 77-993

UNION OIL COMPANY OF CALIFORNIA,
a California corporation,
Petitioner,

vs.

ASHLAND OIL COMPANY OF CALIFORNIA,
a California corporation, and
DEPARTMENT OF ENERGY

Petitioner's Reply Brief in Support of Petition for Writ of Certiorari

MOSES LASKY
Spear Street Tower, Suite 2840
1 Market Plaza
San Francisco, CA 94105
Telephone: (415) 442-0900
Attorney for Petitioner

Of counsel:
BROBECK, PHLEGER & HARRISON
Spear Street Tower
1 Market Plaza
San Francisco, CA 94105
Telephone: (415) 442-0900

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

In the Supreme Court of the United States

No. 77-993

UNION OIL COMPANY OF CALIFORNIA,
a California corporation,
Petitioner,

vs.

ASHLAND OIL COMPANY OF CALIFORNIA,
a California corporation, and
DEPARTMENT OF ENERGY

Petitioner's Reply Brief in Support of Petition for Writ of Certiorari

Analysis of the brief of Ashland in opposition* discloses that in fact it concedes the truth of what we submitted in support of the petition.

Respondent argues (p. 5) that "Congress has invested TECA with exclusive jurisdiction to review judgments of the district courts under the ESA and the EPAA". If by this respondent means what the petition said (p. 7), that appeals from the district courts are all funnelled through the Temporary Emergency Court of Appeals instead of through the courts of appeals, it is true. If it suggests that this Court lacks power to review, it is incorrect. Congress expressly reaffirmed the Court's right to re-

*None has been filed by the Department of Energy.

view TECA decisions on certiorari, just as this Court has the right to review decisions of courts of appeals, with one difference only, that the petition be filed within 30 days (85 Stat. 750).

Later (at p. 10) respondent takes a more modest position, but no sounder, that decisions of TECA "are entitled to great weight, akin to the deference shown to the expertise of administrative agencies in construing the statutes which govern their actions". But no deference is given administrative agencies on matters not within their peculiar sphere (*Board v. Hearst Publications,* 322 U.S. 111, 130, 131). Congress did establish TECA to deal with important issues in the field of energy and price control requiring uniform determination, but what is involved here is not interpretation of the technological application of the law. It is (a) either determination of *California* law, on which TECA has no special expertise, or (b) application of general principles of jurisprudence not peculiar to this specific legislation, of which this Court is the established guardian, and with respect to which TECA has no peculiar expertise either. We submit that a jurisprudence of price regulation should not be permitted to arise cut off from the general body of principles of universal application; no separate satrapy has been created by Congress.

Here the decision of the court below *avoided* applying California law, and respondent's brief does not claim that it either applied California law or construed California law differently from the district court. Taking off from our reference to the district judge as "learned in California law", respondent counters that the Honorable James C. Carter, one of the members of the TECA panel, is also learned in California law. So he is. The difference is that the district judge stated what California law was, while TECA did not even purport to do so. Its decision went off in a totally different direction, holding that, regardless of California law, some federal public policy, unstated in the statue or its legislative history, required some other disposition (petition, p. 8), and respondent does not claim otherwise.

In order to deny that the decision below ignores a pervasive principle settled by this Court, respondent would distinguish our citations on the basis that some relate to *res judicata,* others to full faith and credit, others to removal of actions to federal courts, others to pendent jurisdiction, whereas this case relates to statutes of limitations. But the fact that a principle is applied in a variety of situations is the perfect demonstration that it is "a most basic and pervasive principle" (pet., p. 12), and that was the very point of the citations. Here the principle is that "there is only one cause of action where a single primary right has been violated" (pet., p. 12), and the vice of the decision below is that it does "violence to principles pervading the whole fabric of jurisprudence" (pet., pp. 7-8). One of the cases cited by us did involve a statute of limitations, *McAllister v. Magnolia Petroleum Co.,* 357 U.S. 221 (1958). Respondent argues (p. 8) that the case supports its contention that a federal policy can supersede a state statute of limitations. But in *Magnolia* the federal limitations policy was embodied in an express limitation provision of the federal statute. Because there was only one cause of action, there could be only one applicable statute of limitations, and because there was an express federal statute of limitation, it and not any state statute had to be applied to every aspect of the claim. Here, where there is no federal statute of limitations, and there is the state statute, the same policy against splitting a cause of action must preclude judicial creation of a separate limitation period for one aspect.

On the basis of a view of public policy neither expressed in the statute nor found in legislative history, the court below has

(1) declined to follow the established rule that the state statute of limitations governs where no federal statute is created, and

(2) has split a single cause of action into two, contrary to settled law.

These are the facts on which we submit that review should be granted, and respondent does not challenge these facts.

CONCLUSION

We respectfully submit that the petition should be granted.

Dated: February 16, 1978.

By MOSES LASKY
Moses Lasky
Attorney for petitioner